

Catawba County Board of Commissioners
Regular Session, Monday, November 17, 2008, 7:00 p.m.

Appointments

ABC Board	240	11/17/08
ABC Board Chair	240	11/17/08
Catawba County Board of Adjustment	240	11/17/08

Closed Session

Attorney client privilege, property acquisition, personnel issues	262	11/17/08
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Emergency Services

Existing Fund Balance Newton-Conover Rescue	240	11/17/08
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Juvenile Crime Prevention Council

Additional State Funds	240	11/17/08
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Newton-Conover Rescue

Existing Fund Balance	240	11/17/08
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Ordinances

Soil Erosion and Sedimentation Control Ordinance Amendment	242	11/17/08
Animal Control Ordinance Amendments	257	11/17/08

Utilities and Engineering

Green Certificates – bid award	241	11/17/08
Soil Erosion and Sedimentation Control Ordinance Amendment	242	11/17/08

The Catawba County Board of Commissioners met in regular session on Monday, November 17, 2008 at 7:00 p.m. in the 1924 Courthouse, Robert E. Hibbitts Meeting Room, 30 North College Avenue, Newton, North Carolina.

Present were Chair Katherine W. Barnes, Vice-Chair Lynn Lail and Commissioners Dan Hunsucker, Glenn Barger and Barbara G. Beatty.

Also present were County Manager J. Thomas Lundy, Assistant County Manager Lee Worsley, Assistant County Manager Dewey Harris, County Attorney Debra Bechtel, Deputy County Attorney Anne Marie Pease and County Clerk Barbara Morris.

1. Chair Katherine W. Barnes called the meeting to order at 7:00 p.m.
2. Commissioner Glenn Barger led the Pledge of Allegiance to the Flag.
3. Commissioner Dan Hunsucker offered the invocation.
4. Commissioner Glenn Barger made a motion to approve the minutes of the Regular and Closed Sessions of Monday, November 3, 2008. The motion carried unanimously.
5. Recognition of Special Guests: Chair Barnes welcomed everyone present and congratulated Commissioners Beatty and Hunsucker on their re-elections.
6. Public Comments: Chair Barnes opened the floor for comments:
Gary Corne – regarding proposed changes to Animal control ordinance – felt pen specifications were too stringent – more extensive than state requirements – expensive for dog owners. Suggested use of electric fence (which County attorneys indicated did not meet the standard required by the State) – thought chain link fence should not be required. On appeal process he felt

standards for determination should be set forth and a definition of degree of proof should be required.

Margaret Hines – Maiden – agreed with proposed changes to animal control ordinance. Her pet had been killed by a neighbor's dog. Agreed with fencing requirement and no home confinement option.

Mr. Guthrie - E. 23rd Street, Newton – had been confronted by a pit bull and couldn't get out of his car. Agreed with animal control ordinance changes and thought dogs should be kept locked up.

Dennie Houston – Dover Street, Claremont – against amendments to ordinance. Stated there was a big difference between animal vs. animal confrontations and animal vs. person.

7. Appointments.

Chair Barnes recommended the appointment of J. Vernon Tarlton for a first term to succeed Randy Isenhower on the Alcohol Beverage Control (ABC) Board. Mr. Talton's term will expire on October 5, 2011. Chair Barnes also recommended the appointment of Anne Davis as the Chair of the ABC Board to succeed Mr. Isenhower in that capacity. Chair Barnes recommended her appointment as voting delegate for the North Carolina Association of County Commissioners Legislative Goals Conference. Commissioner Beatty recommended the appointment of Larry Johnson as a full member of the Catawba County Board of Adjustment to replace J.V. Huffman and would make a recommendation to fill Mr. Johnson's alternate position at a later date. These recommendations came in the form of a motion and the motion carried unanimously.

8. Consent Agenda:

County Manager J. Thomas Lundy presented the following three items on the consent agenda:

a. A request for the Board to allocate \$12,143 in additional State funds, received by the Catawba County Juvenile Crime Prevention Council, to currently funded agencies. The Council recommended that \$4,112 be allocated to Social Services' Corner House I and II for a two-week summer camping experience and \$2,265 be allocated to the Conflict Resolution Center and \$5,766 be appropriated to the Catawba County Schools/Parenting Network to serve additional youth.

b. A request for the Board to approve the appropriation of the existing fund balance of Newton-Conover Rescue, in the amount of \$13,086. The funds will be used for a matching grant to purchase rescue equipment. Prior to 1999, each squad had its own fund balance which was carried from year to year unless the squad made a request to appropriate it. In 1999, a decision was made to consolidate the squad fund balances into one Rescue Fund Balance. Each squad's fund balance prior to 1999 was set aside until the squad chose to appropriate it. To access the fund balance, rescue squads submit a use proposal to be voted on by the Rescue Association and agreed to by the County. Newton-Conover Rescue has been saving its fund balance and is now requesting to use these funds to purchase needed rescue equipment. The squad has applied for the 2008 Volunteer Rescue EMS Fund Grant which requires the squad to match the amount granted. The total cost of the equipment requested through the grant is \$38,497.42, with Newton-Conover Rescue's match being \$19,248.71. The requested fund balance of \$13,086 will be applied toward that match. This equipment includes protective clothing for rescue squad members, new communications equipment that will improve pager coverage, and medical equipment, including 14 Automated External Defibrillators (AEDs). The purchase and distribution of the AEDs will give members who respond without a rescue squad vehicle the ability to expedite treatment to patients without having to wait for an equipped vehicle to arrive on scene. This will bring treatment to the patient faster, and may ultimately save lives. The cost to citizens will be reduced as a result of the grant, while the full benefit of this equipment will impact the community as a whole.

c. A request for the Board to authorize the sole source exception allowed under North Carolina law for the purchase of SMART Triage System components. The project is part of a collaboration between North Carolina Emergency Management and the North Carolina Office of Emergency Medical Services. It is designed to build a statewide Patient Tracking and Triage System. In April 2007, the Board approved a supplemental appropriation to accept a Patient Tracking, Triage and Transportation grant funded by the Department of Homeland Security in the amount of \$450,000.

The component equipment would be divided between 100 EMS systems in the state, based on the number of permitted vehicles each system owns. Catawba County is acting as agent for all counties with regard to a new \$450,000 grant from the U.S. Department of Homeland Security. The grant is very specific about the precise equipment to be ordered, stating it must be SMART MCI Triage System equipment. BoundTree Medical of Chicago, Illinois is the sole and exclusive distributor of this product in the U.S. North Carolina General Statute 143-129 allows an exception from formal

bidding when performance or price competition for a product is not available; when a needed product is available from only one source of supply; or when standardization or compatibility is the overriding consideration. All of the equipment will be ordered from BoundTree Medical for a total cost of \$436,580, with \$13,420 to be used for contractual fees to administer the grant, for a total of \$450,000.

Chair Barnes asked if any Commissioner wished for an item or items to be removed from the consent agenda and considered individually. None were requested. Vice-Chair Lail made a motion to approve the consent agenda. The motion carried unanimously.

9. Departmental Reports:

A. Utilities and Engineering:

1. Barry Edwards, Director of Utilities and Engineering, presented a request for the Board to award a bid for purchase and sale services for "green certificates" (renewable energy certificates) to 3 Degrees Group, Inc. through 2010. Catawba County's Co-Generation Facility engines produce an average of 14,000 megawatt hours of electricity per year through burning of methane produced naturally in landfills. A green certificate credit is similar to stock and can be traded or sold in the renewable energy attributes market. Certificates are sold or purchased for a given length of time and the seller has no control of the trading during the "sold" period. On August 2, 2004, the Board approved the marketing and sale of green certificate credits by 3 Phases Energy, currently doing business as 3 Degrees Group, Inc., until the end of calendar year 2006 at the rate of \$1.45 per megawatt hour (MWh) for amounts ranging from 9,500 to 11,250 MWhs. On June 6, 2005, the Board approved an extension of that contract to the end of 2008 and increased quantities to 20,000 MWhs per year. Through June 2008, 71,679 MWh has been sold for a total of \$103,904, which will remain in the County's Solid Waste Enterprise Fund to offset solid waste expenses. All costs associated with the landfill and solid waste activities are funded from the Solid Waste Enterprise Fund, derived from solid waste tipping fees and other solid waste revenues containing no ad valorem tax proceeds. Recognizing that the value of green certificate credits has increased, the County issued a Request for Proposals on September 29, 2008. On October 23, 2008, the County received two proposals for green certificate purchase and sales services. Staff reviewed the proposals from 3 Degrees Group, Inc. for \$4 per MWh for 2009 and \$5 per MWh for 2010, and from Sterling Planet, Inc., for \$1.63 per MWh for both 2009 and 2010. Staff and the Board's Policy and Public Works Subcommittee had recommended awarding the bid for purchase and sale of green certificates to 3 Degrees Group, Inc. through 2010. Commissioner Barger made a motion to award this bid to 3 Degrees Group Inc. through 2010. The motion carried unanimously.

2. Barry Edwards, Utilities and Engineering Director, presented a request for the Board to approve amendments to the County's Soil Erosion and Sedimentation Control Ordinance. The Board adopted a soil erosion and sedimentation ordinance (Catawba County Code, Chapter 31) on May 19, 2005. The Towns of Catawba, Long View and Maiden and the Cities of Claremont, Conover and Hickory contracted with the County for erosion control administration, which began on July 1, 2005. Since the adoption of the original ordinance, changes in North Carolina regulations have occurred. North Carolina General Statutes Chapter 113A, Article 4, was amended in 2007 to include changes to protect endangered species. Thus, Chapter 31 of the County Code requires an amendment to adhere to the State General Statutes. The approved amendments include the following: 1) additional information on endangered species following comments from the U.S. Fish and Wildlife Service and language to protect endangered species where the County is extending the Southeastern Catawba County sewer line; 2) flood plain preservation following comments from the U.S. Fish and Wildlife Service and added language to further protect flood plain from structure encroachment; 3) a decrease in the time limit for slopes to be stabilized to 21 calendar days, to match the General Statutes; 4) language regarding adherence to plans to indicate that not following a submitted plan is a violation in and of itself; 5) language that civil penalty funds will be deposited in the General Fund and no longer with the County's school systems to reflect another change in the State statutes; and 6) the addition of express plan review. Vice-Chair Lail made a motion to approve the proposed changes to this ordinance. The motion carried unanimously. The changes are as follows:

Ordinance No. 2008-18

BE IT ORDAINED that the Catawba County Code of Ordinance, Chapter 31, SOIL EROSION AND SEDIMENTATION CONTROL, is hereby amended to read as follows:

Chapter 31 SOIL EROSION AND SEDIMENTATION CONTROL

- Sec. 31-1. Title.
- Sec. 31-2. Purpose.
- Sec. 31-3. Definitions.
- Sec. 31-4. Scope and exclusions.
- Sec. 31-5. Mandatory standards for land-disturbing activity.
- Sec. 31-6. Erosion and sedimentation control plans.
- Sec. 31-7. Basic control objectives.
- Sec. 31-8. Design and performance standards.
- Sec. 31-9. Stormwater outlet protection.
- Sec. 31-10. Borrow and waste areas.
- Sec. 31-11. Access and haul roads.
- Sec. 31-12. Operations in lakes or natural watercourses.
- Sec. 31-13. Responsibility for maintenance.
- Sec. 31-14. Additional measures.
- Sec. 31-15. Existing uncovered areas.
- Sec. 31-16. Fees.
- Sec. 31-17. Plan appeals.
- Sec. 31-18. Inspections and investigations.
- Sec. 31-19. Penalties.
- Sec. 31-20. Injunctive relief.
- Sec. 31-21. Restoration after noncompliance.
- Sec. 31-22. Severability.
- Sec. 31-23. Effective date.

Sec. 31-1. Title.

This chapter may be cited as the County of Catawba Soil Erosion and Sedimentation Control Ordinance.
(Ord. No. 2005-07, § 1, 5-2-2005)

Sec. 31-2. Purpose.

This chapter is adopted for the purpose of:

- a) Regulating certain land-disturbing activity to control accelerated erosion and sedimentation in order to prevent the pollution of water and other damage to lakes, watercourses, and other public and private property by sedimentation; and
- b) Establishing procedures through which these purposes can be fulfilled.
(Ord. No. 2008-07, § 2, 5-2-2005)

Sec. 31-3. Definitions.

As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

Accelerated erosion means any increase over the rate of natural erosion as a result of land-disturbing activity.

Act means the North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it.

Adequate erosion control measure, structure, or device means one which controls the soil material within the land area under responsible control of the person conducting the land-disturbing activity.

Affiliate means a person that directly or indirectly through one of more intermediaries, controls, is controlled by, or is under common control of another person.

Being conducted means a land-disturbing activity has been initiated and permanent stabilization of the site has not been completed.

Best Management Practices (BMP) means a structural device, measure, facility, or activity which helps to achieve soil erosion and stormwater management control objectives at a designated site as recognized in the most recent version of the North Carolina Division of Water Quality, Stormwater Best Management Practices Manual.

Borrow means fill material which is required for on-site construction and is obtained from other locations.

Buffer zone means the strip of land adjacent to a lake or natural watercourse.

Catawba County means the staff members of the Catawba County Utilities and Engineering Department or any agents, officials or other qualified personnel of the County who are authorized to enforce the provisions of this ordinance

Coastal counties means the following counties: Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrell, and Washington.

Commission means the North Carolina Sedimentation Control Commission.

Completion of construction or development means that no further land-disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.

Department means the North Carolina Department of Environment and Natural Resources.

Development means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling grading, paving, excavation, or drilling operations or storage of equipment or materials.

Director means the Director of the Division of Land Resources of the Department of Environment and Natural Resources.

Discharge point means that point at which stormwater runoff leaves a tract of land.

District means the 2nd Soil and Water Conservation District created pursuant to G.S. ch. 139.

Energy dissipater means a structure or shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high velocity flow.

Erosion means the wearing away of land surfaces by the action of wind, water, gravity, or any combination thereof.

Financially Responsible Owner (FRO) means the person financially responsible for the land disturbing activity being conducted.

Ground cover means any natural vegetative growth of other material which renders the soil surface stable against accelerated erosion.

Ground Level Improvements means ground level loading areas, parking areas, patios and other similar ground level uses that will not occupy additional volume of the floodplain during times of flooding.

High quality waters means those classified as such in 15A NCAC 2B.0101(e) (5)—General Procedures, which is incorporated herein by reference to include further amendments pursuant to G.S. 150B-14(c).

High quality water (HQP) zones means, for the coastal counties, areas within 575 feet of high quality waters; and for the remainder of the state, areas within one mile and draining to HQW's.

Impervious surface means any material that significantly reduces and prevents natural infiltration of water into the soil. Impervious surfaces include but are not limited to roofs, patios, balconies, decks, streets, parking areas, driveways, sidewalks, and any concrete, stone, brick, asphalt, or compacted gravel surface. For purposes of this chapter, the effective impervious coverage of certain surfaces listed below is:

- (1) Asphalt, concrete, crush and run gravel, masonry, marl, wood, and other impermeable surfaces which prevent land area from infiltrating stormwater are one hundred (100) percent impervious.
- (2) Porous surfaces which permit direct infiltration of unconcentrated stormwater into ground areas so that the first one half (1/2) inch of stormwater infiltrates into the ground are seventy (70) percent impervious.
- (3) Slatted wood decks that allow the drainage of water through the slats to an unpaved surface below are fifty (50) percent impervious.
- (4) Ungraveled natural footpaths, water surfaces of swimming pools, and drain fields are zero (0) percent impervious.

All other necessary determinations about impervious surfaces will be based on hydrological tests considering existing subgrade soils, slope, rainfall intensity, and rainfall duration.

Lake or natural watercourse means any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, and any reservoir, lake or pond, natural or impounded in which sediment may be moved or carried in suspension, and which could be damaged by accumulation of sediment.

Land-disturbing activity means any use of the land by any person in residential, industrial, education, institutional, or commercial development, highway and road construction maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation.

Local government means any county, incorporated village, town or city, or any combination of counties, incorporated villages, towns, and cities, acting through a joint program pursuant to the provisions of the Act.

Natural Erosion means the wearing away of the earth surface by water, wind, or other natural agents under natural environmental conditions undisturbed by man.

Parent means an affiliate that directly, or indirectly through one or more intermediaries, controls another person.

Person means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.

Person conducting land-disturbing activity means any person who may be held responsible for violation unless expressly provided otherwise by this chapter, the Act, or any order adopted pursuant to this chapter or the Act.

Person responsible for the violation means:

(1) The developer or the other person who has or holds himself out as having financial or operation control over the-disturbing activity; or

(2) The landowner or person in possession or control of the land that has directly or indirectly allowed the land-disturbing activity, or benefited from it or failed to comply with a duty imposed by any provision of this chapter, the Act, or any order adopted pursuant to this chapter or the Act.

Phase of grading means one or two types of grading; rough or fine.

Plan means an erosion and sedimentation control plan.

Sediment means solid particulate matter, both mineral and organic, that has been or is being transported by water air, gravity, or ice from its site of origin.

Sedimentation means the process by which sediment resulting from acceleration erosion has been or is being transported off the sit [site] of the land-disturbing activity or into a lake or natural watercourse.

Situation means sediment resulting from accelerated erosion which is settleable or removable by properly designed, constructed, and maintained control measures; and which has been transported from its point of origin within the site of a land-disturbing activity; and which has been deposited, or is in suspension in water.

Storm drainage facilities means the system of inlets, conduits, channels, ditches and appurtenances which serve to collect and convey storm water through and from a given drainage area.

Storm water runoff means the surface flow of water resulting from precipitation in any form and occurring immediately after rainfall or melting.

Subsidiary means an affiliate that is directly or indirectly through one or more intermediaries controlled by another person.

Sewershed means a drainage area in which sources of sewerage flow by either gravity or pumping to reach a common collection point.

Sherrill's Ford district includes all lands which carry precipitation in the form of stormwater, via natural or manmade conveyances, down slope to the Sherrill's Ford sewer line as defined in Exhibit 1.

Ten-year storm means the stormwater runoff resulting from precipitation of an intensity expected to equaled or exceeded, on the average, once in ten years, and of a duration which will produce the

maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions.

Top of Bank for the purposes of the sewershed district(s) , the point on a stream's cross section defined by the bankfull elevation or the highest point in elevation immediately adjacent to the stream channel, whichever is greater.

Tract means all contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.

Twenty-five year storm means the stormwater runoff resulting from precipitation of an intensity expected to be equaled or exceeded on the average once in 25 years, and of a duration which will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions.

Two year storm means the stormwater runoff resulting from precipitation of an intensity expected to be equaled or exceeded on the average once in two (2) years, and of a duration which will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions

Uncovered means the removal of ground cover from, on, or above the soil surface.

Undertaken means the initiating of any activity, or phase of activity, which results or will result in a change in the ground cover or topography of a tract of land.

Velocity means the average velocity of flow through the cross section of the main channel at the peak flow of the storm of interest. The cross section of the main channel shall be that area defined by the geometry of the channel plus the area of flow below the flood height defined by the vertical lines at the main channel banks. Overload flows are not to be included for the purpose of computing velocity of flow.

Waste means surplus materials resulting from on-site land-disturbing activities and being disposed of at other locations.

Working days means days exclusive of Saturday and Sunday during which weather conditions or soil conditions permit land-disturbing activity to be undertaken.

(Ord. No. 2005-07, § 3, 5-2-2005)

Sec. 31-4 Scope and exclusions

(a) **Geographical scope of regulated land-disturbing activity.** This chapter shall apply to land-disturbing activity within the territorial jurisdiction of the county and to the extraterritorial jurisdiction of the county as allowed by agreement between local governments, the extent of annexation or other appropriate legal instrument or law.

(b) **Exclusions from regulated land-disturbing activity.** Notwithstanding the general applicability of this chapter to all land-disturbing activity, this chapter shall not apply to the following types of land disturbing activity:

(1) An activity, including breeding and grazing of livestock, undertaken on agricultural land for the production of plants and animals useful to man, including, but not limited to:

- (i) Forage and sod crops, grain and feed crops, tobacco, cotton, and peanuts.
- (ii) Dairy animals and dairy products.
- (iii) Poultry and poultry products.
- (iv) Livestock, including beef cattle, sheep, swine, horses, ponies, mules, and goats.
- (v) Bees and apiary products.
- (vi) Fur-producing animals.

(2) An activity undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with best management practices set out in Forest Practice Guidelines Related to Water Quality, as adopted by the department. If land –disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with Forest Practice Guidelines Related to Water Quality, the provisions of this chapter shall apply to such activity and any related land-disturbing activity on the tract.

(3) An activity for which a permit is required under the Mining Act of 1971, G.S. ch. 74, art.7.

- (4) A land-disturbing activity over which the State has exclusive regulatory jurisdiction as provided in G.S. 113A-56(a).
- (5) An activity which is essential to protect human life during an emergency.
- (c) **Plan approval requirement for land-disturbing activity.** No person shall undertake any land-disturbing activity subject to this chapter without first obtaining a plan approval therefore from the county.
- (d) **Protection of property.** Persons conducting land-disturbing activity shall take all responsible measures to protect all public and private property from damage caused by such activity.
- (e) **More-restrictive rules shall apply.** Whenever conflicts exist between federal, state, or local laws, ordinance, or rules, the more-restrictive provision shall apply.
- (f) **Plan approval exceptions.** Notwithstanding the general requirement to obtain a plan approval prior to undertaking land-disturbing activity, a plan approval shall not be required for land-disturbing activity that does not exceed 43,560 square feet in surface area, lands under one or diverse ownership being developed as a unit will be aggregated.
(Ord. No. 2005-07, § 4, 5-2-2005)

Sec. 31-5. Mandatory standards for land-disturbing activity.

No land-disturbing activity subject to the control of this ordinance shall be undertaken except in accordance with the following mandatory standards:

- (a) **Buffer zone.**
 - (1) **Standard buffer.** No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the 25 percent of the buffer zone nearest the land-disturbing activity.
 - (i) **Projects on, over or under water.** This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.
 - (ii) **Buffer measurement.** Unless otherwise provided, the width of a buffer zone is measured horizontally from the edge of the water to the nearest edge of the disturbed area, with the 25 percent of the strip nearer the land-disturbing activity containing natural or artificial means of confining visible siltation.
- (2) **Trout Buffer.** Waters that have been classified as trout waters by the environment management commission shall have an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation within 25 percent of the buffer zone nearest the land-disturbing activity, whichever is greater. Provided, however, that the commission may approve plans which include land-disturbing activity along trout waters then the duration of said disturbance would be temporary and the extent of said disturbance would be minimal.
 - (i) **Projects on, over or under water.** This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.
 - (ii) **Trout buffer measurement.** The 25-foot minimum width for an undisturbed buffer zone adjacent to designated trout waters shall be measured horizontally from the top of the bank to the nearest edge of the disturbed area.
 - (iii) **Limit on land disturbance.** Where a temporary and minimal disturbance has been permitted as an exception to the trout buffer, land-disturbing activities in the buffer zone adjacent to designated trout waters shall be limited to a maximum of ten percent of the total length of the buffer

zone within the tract to be disturbed such that there is not more than 100 linear feet of buffer zone. Larger areas may be disturbed with the written approval of the director.

(iv) **Limit on temperature fluctuations.** No land-disturbing activity shall be undertaken within a buffer zone adjacent to designated trout waters that will cause adverse temperature fluctuations in the trout waters, as set forth in 15 NCAC 2B .0211 "Fresh Surface Water Classification and Standards."

(b) **Graded slopes and fills.** The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within 21 calendar days of completion of any phase of grading, whichever period is shorter, be planted or planted or otherwise provided with temporary or permanent ground cover, devices, or structures sufficient to restrain erosion.

(c) **Fill material.** Unless a permit from the department's division of waste management to operate a landfill is on file for the official site, acceptable fill material shall be free of organic or other degradable materials, masonry, concrete and brick in sizes exceeding 12 inches, and any materials which would cause the site to be regulated as a landfill by the state.

(d) **Ground cover.** Whenever land-disturbing activity that will disturb more than one acre is undertaken on a tract, the person conducting the land-disturbing activity shall install erosion and sedimentation control devices and practices that are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon the development of said tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development. Except as provided in subsection 31-8(b)(5), provisions for a ground cover sufficient to restrain erosion must be accomplished within 15 working days or 90 calendar days following completion of construction or development, whichever period is shorter.

(e) **Prior plan approval.** No person shall initiate any land-disturbing activity on a tract if more than one acre is to be uncovered unless, 30 or more days prior to initiating the activity, a plan for such activity is filed with and approved by the county. An erosion and sedimentation control plan may be filed less than 30 days prior to initiation of a land disturbing activity if the plan is submitted under the Express Plan Review program, and the land disturbing activity may be initiated and conducted in accordance with the plan once the plan has been approved. The county shall forward to the director of the division of water quality for the purpose of dewatering or lowering the water table of the tract.

(f) The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan

(Ord. No. 2005-07, § 5, 5-2-2005)

Sec. 31-6 Erosion and sedimentation control plans.

(a) **Plan submission.** A plan shall be prepared for all land-disturbing activities subject to this chapter whenever the proposed activity is to be undertaken on a tract comprising more than one acre, if more than one acre is to be uncovered. Five copies of the plan shall be filed with the county, a copy shall be simultaneously submitted to the 2nd Soil and Water Conservation District at least 30 days prior to the commencement of the proposed activity.

(b) **Financial responsibility and ownership.** Plans may be disapproved unless accompanied by an authorized statement of financial responsibility and ownership. This statement shall be signed

by the person financially responsible for the land-disturbing or his attorney in fact. The statement shall include the mailing and street addresses of the principal place of business of (1) the person financially responsible, (2) the owner of the land, and (3) any registered agents. If the person financially responsible is not a resident of North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving notice of compliance or noncompliance with the plan, the Act, this chapter, or rules or orders adopted or issued pursuant to this ordinance.

(c) ***Environmental Policy Act document.*** Any plan submitted for a land-disturbing activity for which an environmental document is required by the North Carolina Environment Policy Act (G.S. 113A-1, et seq.) shall be deemed incomplete until a complete environmental document is available for review. The county shall promptly notify the person submitting the plan that the 30-day time limit for review of the plan pursuant to this ordinance shall not begin until a complete environmental document is available for review.

(d) ***Content.*** The plan required by this section shall contain architectural and engineering drawings, maps, assumptions, calculations, and narrative statements as needed to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this chapter. Plan content may vary to meet the needs of the specific site requirements. Detailed guidelines for plan preparation may be obtained from the county, on request.

(e) ***Soil and water conservation district comments.*** The district shall review the plan and submit any comments and recommendations to the county within 20 days after the district received the plan, or within any shorter period of time as may be agreed upon by the district and the county. Failure of the district to submit its comments and recommendations within 20 days or within any agreed-upon shorter period of time shall not delay final action on the plan.

(f) ***Timeline for decisions on plans.*** The county will review each complete plan submitted to them and within 30 days of receipt thereof will notify the person submitting the plan that it has been approved, approved with modifications, approved with performance reservations, or disapproved. Failure to approve, approve with modifications, or disapprove a complete plan within 30 days of receipt shall be deemed approval. The county will review each revised plan submitted to them and within 15 days of receipt thereof will notify the person submitting the plan that it has been approved, approved with modifications, approved with performance reservations, or disapproved. Failure to approve, approve with modifications, or disapprove a revised plan within 15 days of receipt shall be deemed approval.

(g) ***Approval.*** The county shall only approve a plan upon determining that it complies with all applicable state and local regulations for erosion and sedimentation control. Approval assumes the applicant's compliance with the federal and state water-quality laws, regulations and rules. The county may establish an expiration date, not to exceed three years, for plans approved under this chapter.

(h) ***Disapproval of content.*** The county shall disapprove a plan or draft plan based on its content. A disapproval based upon a plan's content must specifically state in writing the reasons for disapproval.

(i) ***Other disapprovals.*** The county may disapprove a plan or draft plans if implementation of the plan would result in a violation of the rules adopted by the environmental management commission to protect riparian buffers along surface waters. A local government may disapprove a plan upon finding that an applicant, or a parent, subsidiary, or other affiliate of the applicant:

- (i) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the commission or a local government pursuant to the Act and has not complied with the notice within the time specified in the notice;
- (ii) Has failed to pay a civil penalty assessed pursuant to the Act or a local ordinance adopted pursuant to the Act by the time the payment is due.

- (iii) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to the Act or;
- (iv) Has failed to substantially comply with state rules or local ordinances and regulations adopted pursuant to the Act.

For purposes of this subsection, an applicant's record may be considered for only the two years prior to the application date.

In the event that a plan is disapproved pursuant to the subsection, the county shall notify the director of such disapproval within 10 days. The county shall advise the applicant and the director in writing as to the specific reasons that the plan was disapproved.

(j) **Notice of activity initiation.** No person may initiate a land-disturbing activity before notifying authority a preconstruction conference may be required.

(k) **Preconstruction conference.** When deemed necessary by the approving authority a preconstruction conference may be required.

(l) **Display of a plan approval.** A plan approval issued under this chapter shall be prominently displayed until all construction is complete, all permanent sedimentation and erosion control measures are installed and the site has been stabilized. A copy of the approved plan shall be kept on file at the job site.

(m) **Required revisions.** After approving a plan, if the county wither upon review of such plan or on inspection of the job site, determines that a significant risk of accelerated erosion or off-site sedimentation exists, the county shall require a revised plan. Pending the preparation of the revised plan, work shall cease or shall continue under conditions outlined by the appropriate authority. If following commencement of a land-disturbing activity pursuant to an approved plan, the county determines that the plan is inadequate to meet the requirements of this chapter, the county may require any revision of the plan that is necessary to comply with this chapter.

(n) **Amendment to a plan.** Applications for amendment of a plan in written and/or graphic form may be made at any time under the same conditions as the original application. Until such time as said amendment is approved by the county, the land-disturbing activity shall not proceed except in accordance with the plan as originally approved.

(o) **Failure to file a plan.** Any person engaged in a land-disturbing activity who fails to file a plan in accordance with this chapter, or who conducts a land-disturbing activity except in accordance with provisions of an approved plan, shall be deemed in violation of this ordinance.
(Ord. No. 2005-07, § 7, 5-2-2005)

Sec. 31-7 Basic control objectives.

An erosion and sedimentation control plan may be disapproved if the plan fails to address the following control objectives:

- (a) **Identify critical areas.** On-site areas which are subject to severe erosion and off-site areas which are especially vulnerable to damage from erosion and/or sedimentation are to be identified and receive special attention.
- (b) **Limit time of exposure.** All land-disturbing activities are to be planned and conducted to limit exposure to the shortest feasible time.
- (c) **Limit exposed areas.** All land-disturbing activities are to be planned and conducted to limit exposure to the shortest feasible time.
- (d) **Control surface water.** Surface water run-off originating upgrade of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure.

(e) **Control sedimentation.** All land-disturbing activity is to be planned and conducted so as to prevent off-site sedimentation damage.

(f) **Manage storm water runoff.** When the increase in the velocity of storm water run-off resulting from a land-disturbing activity is sufficient to cause accelerated erosion of the receiving watercourse, a plan is to include measures to control the velocity to the point of discharge so as to minimize accelerated erosion of the site and increased sedimentation of the stream.

(Ord. No. 2005-07, § 7, 5-2-2005)

Sec. 31-8. Design and Performance Standards

(a) **[Runoff rates.]** Except as provided in subsection (b) (2), erosion and sedimentation control measures, structures, and devices shall be planned, designed, and constructed to provide protection from the calculated maximum peak rate of runoff from the ten-year storm. Runoff rates shall be calculated using the procedures in the USDA, Soil Conservation Service's "National Engineering Field Manual for Conservation Practices", or other acceptable calculation procedure including, but not limited to, the "North Carolina Erosion and Sediment Control Planning and Design Manual".

(b) **HQW zones.** In high quality water (HQW) zones the following design standards shall apply.

(1) **Limit uncovered area.** Uncovered areas in HQW zones shall be limited at any time to a maximum total area of 20 acres within the boundaries of the tract. Only the portion of the land-disturbing activity within an HQW zone shall be governed by this section. Larger areas may be uncovered within the boundaries of tract with the written approval of the director.

(2) **Maximum peak rate of runoff protection.** Erosion and sedimentation control measures, structures, and devices within HQW zones shall be planned, designed and constructed to provide protection from the runoff of the 25-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture Soil Conservation Service's "National Engineering Field Manual for United States or any generally recognized organization or association.

(3) **Setting efficiency.** Sediment basins within HQW zones shall be designed and constructed such that the basin will have a settling efficiency of at least 70 percent for the 40 micron (0.04 millimeter) size soil particle transported into the basin by the runoff of that two-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture Soil Conservation Service's "National Engineering Field Manual for Conservation Practices" or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.

(4) **Grade.** Newly constructed open channels in HQW zones shall be designed and constructed with side slopes no steeper than two horizontal to one vertical if a vegetative cover is used for stabilization unless soil conditions permit a steeper slope or where the slopes are stabilized by using mechanical devices, structural devices or other acceptable ditch liners. In any event, the angle for side slopes shall be sufficient to restrain accelerated erosion.

(5) **Ground Cover.** Ground cover sufficient to restrain erosion must be provided for any portion of a land-disturbing activity in a HQW zone within 15 working days or 60 calendar days following completion of construction or development, whichever period is shorter.

(Ord. No. 2005-07, § 8, 5-2-2005)

(c) **Sewershed Areas.**

Sherrill's Ford district.

(1) **Existing Development.** Existing development is not subject to the requirements of this section; existing development shall be considered to be any impervious surfaces created prior to, or

for which a vested right has been established, as of the effective date of this ordinance. However, redevelopment and expansion of any development shall be subject to the requirements of this section.

(2) **General Requirements.** Prior to developments of any tract of land over one acre in size, the applicant or Financially Responsible Party for the proposed project shall conduct surveys for threatened or endangered species in the project area. The required surveys, or a statement that none are present, shall be submitted along with the Erosion and Sedimentation Control Plan.

(3) **Flood Plain Preservation.** No new development disturbing over one acre shall, after the effective date of this ordinance, encroach in to floodplains designated in the Sherrill's Ford district that are on the most recent FEMA Flood Insurance Rate Maps (FIRMs).

An additional 25 foot setback shall be preserved from the landward edge of the protected floodplain areas, and diffuse flow shall be maintained across forested floodplain areas both during and after land disturbing activities impacting one or more acres.

(a) Single family residential lots may incorporate ground level improvements within the required setback. No additional fill or structures will be allowed within the setbacks.

(b) Commercial, industrial and multi-family developments are allowed to encroach into the 25 foot setback when additional BMPs are employed to capture and treat stormwater expected from the two-year/24 hour storm.

(c) Where required, the utilization of BMPs shall be subject to approval of the Catawba County Utilities and Engineering Department. Catawba County recognizes that stormwater treatment and control is an evolving science, and will entertain site specific proposals for use and implementation of BMPs. For purposes of this section, water-dependent structures and public projects where no practical alternative exists, and other non-habitable structures are exempt from the requirements of this section.

Sec. 31-9. Storm Water outlet protection.

(a) **Intent.** Stream banks and channels downstream from any land-disturbing activity shall be protected from increased degradation by accelerated erosion caused by increased velocity of runoff from the land-disturbing activity.

(b) **Performance standard.** Persons shall conduct land-disturbing activity so that the post construction velocity of the ten-year storm runoff in the receiving watercourse to the discharge point does not exceed the greater of:

(1) The velocity established by the maximum permissible velocities table set out within this subsection; or

(2) The velocity of the ten-year storm runoff in the receiving watercourse prior to the development.

If condition (1) or (2) cannot be met, then the receiving watercourse to and including the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the "prior to development" velocity by ten percent.

Maximum Permissible Velocities Table

The following is a table for maximum permissible velocity for storm water discharges in feet per second (F.P.S.) and meters per second (M.P.S.):

<i>Material</i>	<i>F.P.S.</i>	<i>M.P.S.</i>
Fine sand (non-colloidal)	2.5	.8
Sandy loam (non-colloidal)	2.5	.8
Silt loam (non-colloidal)	3.0	.9

Ordinary firm loam	3.5	1.1
Fine gravel	5.0	1.5
Stiff clay (very colloidal)	5.0	1.5
Graded, loam to cobbles (colloidal)	5.0	1.5
Alluvial silts (non-colloidal)	3.5	1.1
Alluvial silts (colloidal)	5.0	1.5
Coarse gravel (non-colloidal)	6.0	1.8
Cobbles and shingles	5.5	1.7
Shales and hard pans	6.0	1.8
Source—Adapted from recommendations by special Committee on Irrigation Research, American Society of Civil Engineers, 1926, for channels with straight alignment. For sinuous channels, multiply allowable velocity by 0.95 for slightly sinuous, by 0.9 for moderately sinuous channels, and by 0.8 for highly sinuous channels.		

(c) **Acceptable management measures.** Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. The county recognizes that the management of storm water runoff to minimize or control downstream channel and bank erosion is a developing technology. Innovative techniques and ideas will be considered and may be used when shown to have the potential to produce successful results. Some alternatives, while not exhaustive, are to:

- (1) Avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious;
- (2) Avoid increases in storm water discharge velocities by using vegetated or roughened swales and waterways in place of closed drains and high velocity paved sections;
- (3) Provide energy dissipaters at outlets of storm drainage facilities to reduce flow velocities to the point of discharge;
- (4) Protect watercourses subject to accelerated erosion by improving cross sections and/ or providing erosion-resistant lining; and
- (5) Upgrade or replace the receiving device structure or watercourse such that it will receive and conduct the flow to a point where it is no longer subject to degradation from the increased rate of flow or increased velocity.

(d) **Exceptions.** This rule shall not apply where it can be demonstrated to the county that storm water discharge velocities will not create an erosion problem in the receiving watercourse. (Ord. No. 2005-07, § 9, 5-2-2005)

Sec. 31-10. Borrow and waste areas.

When the person conducting the land-disturbing activity is also the person conducting the borrow-or waste-disposal activity, areas from which borrow is obtained and which are not regulated by the provisions of the Mining Act of 1971, and waste areas for surplus materials other than landfills regulated by the department's division of waste management shall be considered as part of the land-disturbing activity where the borrow material is being used or from which the waste material originated. When the person conducted the land-disturbing activity is not the person obtaining the borrow and/or disposing of the waste, these areas shall be considered a separate land-disturbing activity.

(Ord. No. 2005-07, § 10, 5-2-2005)

Sec. 31-11. Access and haul roads.

Temporary access and haul roads, other than public roads, constructed or used in connection with any land-disturbing activity shall be considered a part of such activity.
(Ord. No. 2005-07, § 11, 5-2-2005)

Sec. 31-12. Operations in lakes or natural watercourses.

Land-disturbing activity in connection with construction in, on, over, or under a lake or natural watercourse shall minimize the extent and duration of disruption of the stream channel. Where relocation of a stream forms an essential part of the proposed activity, the relocation shall minimize unnecessary changes in the stream flow characteristics.
(Ord. No. 2005-07, § 12, 5-2-2005)

Sec. 31-13. Responsibility for maintenance.

During the development of a site, the person conducting the land-disturbing activity shall install and maintain all temporary and permanent erosion and sedimentation control measures as required by the approved plan or any provision of this chapter, the Act, or any order adopted pursuant to this chapter or the Act. After site development, the landowner or person in possession or control of the land shall install and/or maintain all necessary permanent erosion and sediment control measures, except those measures installed within a road or street right-of-way or easement accepted for maintenance by a government agency.
(Ord. No. 2005-07, § 13, 5-2-2005)

Sec. 31-14. Additional measures.

Whenever the county determines that significant erosion and sedimentation is occurring as a result of land-disturbing activity, despite application and maintenance of protective practices, the person conducting the land-disturbing activity will be required to and shall take additional protective action.
(Ord. No. 2005-07, § 14, 5-2-2005)

Section 31-15. Existing uncovered areas.

(a) All uncovered areas existing on the effective date of this chapter [July 1, 2005] which resulted from land-disturbing activity, exceed one acre, are subject to continued accelerated erosion, and are causing off-site damage from sedimentation shall be provided with a ground cover or other protective measures, structures, or devices sufficient to retrain accelerated erosion and control off-site sedimentation.

(b) The county shall serve upon the landowner or other person on possession or control of the land a written notice to comply with the Act, this chapter, a rule or order adopted or issued pursuant to the Act by the commission or by the county. The notice to comply shall be sent by registered or certified mail, return receipt requested, or other means provided in G.S. 1A-1, rule 4. The notice will set forth the measures needed to comply and will state the time within which such measures must be completed. In determining the measures required and the time allowed for compliance, the authority serving notice shall take into consideration the economic feasibility, technology, and quantity of work required, and shall set reasonable and attainable time limits of compliance.

(c) The county reserves the right to require preparation and approval of a plan in any instance where extensive control measures are required.

(d) This rules shall not require ground cover on cleared land forming the future basin of a planned reservoir.

(Ord. No. 2005-07, § 15, 5-2-2005)

Sec. 31-16. Fees.

(a) The county may establish a fee schedule for the review and approval of plans.

(b) In establishing the fee schedule, the county shall consider the administrative and personnel costs incurred for reviewing the plans and for related compliance activities.

(Ord. No. 2005-07, § 16, 5-2-2005)

Sec. 31-17. Plan appeals.

(a) Except as provided in subsection (b), the appeal of a disapproval or approval with modifications of a plan shall be governed by the following provisions:

(1) The disapproval or modification of any proposed plan by the county shall entitle the person submitting the plan to a public hearing if such person submits written demand for a hearing within 15 days after receipt of written notice of disapproval or modifications.

(2) A hearing held pursuant to this section shall be conducted by the subdivision review board within 60 days of the date of a timely written request for a hearing.

(3) The subdivision review board will render its final decision on any plan following the completion of the hearings.

(4) If the subdivision review board upholds the disapproval or modification of a proposed plan following the hearing, the person submitting the plan shall then be entitled to appeal the county's decision to the sedimentation control commission as provided in G.S. 113A-61(c) and 15A NCAC 4B.0118(d).

(b) In the event that a plan is disapproved pursuant to subsection 31-6(i), the applicant may appeal the county's disapproval of the plan directly to the commission.

(Ord. No. 2005-07, § 17, 5-2-2005)

Sec. 31-18. Inspections and Investigations.

(a) **Inspection.** Agents, officials, or other qualified persons authorized by the county will periodically inspect land-disturbing activities to ensure compliance with the Act, this chapter, or rules or orders adopted or issued pursuant to this chapter, and ensure compliance with the Act, this chapter, or rules or orders adopted or issued pursuant to this chapter, and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation resulting from land-disturbing activity. Notice of the right to inspect shall be included in the certificate of approval of each plan.

(b) **Willful resistance, delay or obstruction.** No person shall willfully resist, delay, or, obstruct an authorized representative, employee, or agent of the county while that person is inspecting or attempting to inspect a land-disturbing activity under this section.

(c) **Notice of Violation.** If the county determines that a person engaged in land-disturbing activity has failed to comply with the Act, this chapter, rules, or orders adopted or issued pursuant to this chapter, a notice of violation shall be served upon that person. The notice may be served by any means authorized under G.S. 1A-1, rule 4. The notice shall specify a date by which the person

must comply with the Act, or this chapter, or rules, or orders adopted pursuant to this chapter, and inform the person of the actions that need to be taken to provided in G.S. 113A-64 and this chapter.

(d) **Investigation.** The county shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this chapter, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating inspecting the sites of any land-disturbing

(e) **Statements and reports.** The county shall also have the power to require written statements, or filing of reports under oath, with respect to pertinent questions relating to land-disturbing activity.
(Ord. No. 2005-07, § 18, 5-2-2005)

Sec. 31-19. Penalties.

(a) **Civil penalties.**

(1) **Civil penalty for a violation.** Any person who violates any of the provisions of this chapter, or rule or order adopted or issued pursuant to this chapter, or who initiates or continues a land-disturbing activity for which a plan is required except in accordance with the terms, conditions, and provisions of an approved plan, is subject to a civil penalty. The maximum civil penalty amount that the county may assess per violation is \$5, 000.00. A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation.

(2) **Civil penalty assessment factors.** The governing body of the county shall determine the amount of the civil penalty based upon the following factors:

- (i) The degree and extent of harm caused by the violation,
- (ii) The cost of rectifying the damage
- (iii) The amount of money the violator saved by noncompliance
- (iv) Whether the violation was committed willfully, and
- (v) The prior record of the violator in complying of failing to comply with this chapter.

(3) **Notice of civil penalty assessment.** The governing body of the county shall provide notice of the civil penalty amount and basis for assessment to the person assessed. The notice of assessment shall be served by any means authorized under G.S. 1A-1, rule 4, and shall direct the violator to either pay the assessment or contest the assessment, within 30 days, after receipt of the notice of assessment, by written demand for a hearing.

(4) **Hearing.** A hearing on a civil penalty shall be conducted by the county within 30 days after the date of the written demand for the hearing. The agency conducting the hearing shall make its recommendation to the governing body of the county within 30 days after the date of the hearing.

(5) **Final decision.** The governing body shall render its final decision on the civil penalty within 15 days of the receipt of the recommendation from the agency.

(6) **Appeal of final decision.** Appeal from the final decision of the governing body shall be to the superior court of the county where the violation occurred, or the location of the violator's residence or principal place of business.

(7) **Collection.** If payment is not received within 30 days after it is due, the county may institute a civil action to recover the amount of the assessment. The civil action may be brought in the superior court of the county where the violation occurred, or the violator's residence or principal place of business is located. Such civil actions must be filed within three years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment is contested that is contested is due at the administrative and judicial review of the assessment.

(8) **Credit of civil penalties.** Civil penalties collected pursuant to this section shall be credited to the **general fund as non tax revenue.**

(b) **Criminal penalties.** Any person who knowingly or willfully violates any provision of this chapter, or rule or order adopted or issued pursuant to this chapter, or who knowingly or willfully initiates or continues a land-disturbing activity for which a plan is required except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a class 2 misdemeanor which may include a fine not to exceed \$5,000.00 as provided in G.S. § 113A-64.

(Ord. No. 2005-07, § 19, 5-2-2005)

Sec. 31-20. Injunctive relief.

(a) **Violation of local program.** Whenever the governing body has reasonable cause to believe that any person is violating or threatening to violate any ordinance, rule, regulation, or order adopted or issued by the county or any term, condition, or provision of an approved plan, it may, either before or after the institution of any other action or proceeding authorized by this chapter, institute a civil action in the name of the county for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the superior court of the county in which the violation is occurring or is threatened.

(b) **Abatement of violation.** Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter any order or judgment that is necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to the proceedings from any civil or criminal penalty prescribed for violations of this chapter. Upon determination by a court that an alleged violation is occurring or threatened, county shall issue no building, zoning, or environmental permits to the violator until such violation is abated.

(Ord. No. 2005-07, § 20, 5-2-2005)

Sec. 31-21 Restoration after noncompliance.

The county may require a person who engaged in a land-disturbing activity and failed to retain sediment generated by the activity, as required by G.S. 113A-57(3), to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this chapter.

(Ord. No. 2005-07, § 21, 5-2-2005)

Sec. 31-22. Severability.

If any section or sections of this chapter is/are held to be invalid or unenforceable, all other sections shall nevertheless continue in full force and effect.

(Ord. No. 2005-07, § 22, 5-2-2005)

Sec. 31-23. Effective date.

This chapter becomes effective on July 1, 2005.

(Ord. No. 2005-07, § 23, 5-2-2005)

This the 17th day of November, 2008.

B. Emergency Services

Lee Worsley, Assistant County Manager, presented a request for the Board to approve amendments to the Catawba County Animal Control Ordinance. In May 2008, the Board approved amendments to this ordinance. Some of those amendments addressed dangerous and potentially dangerous dogs. Since May, staff has had an opportunity to see how the new regulations impact dangerous or potentially dangerous dog cases. After reviewing the impact of the new ordinances, staff was now recommending some adjustments.

The changes are designed to make the enforcement of the dangerous and potentially dangerous dog provisions as clear as possible for the public and staff; protect public safety; provide the public with as much flexibility as possible; and further align the definitions and confinement requirements to the North Carolina General Statutes.

Some of the amendments approved in May 2008 pertain to dangerous and potentially dangerous dogs. Prior to the May 2008 amendments, the County had definitions for vicious and dangerous dogs but no definition for "potentially dangerous dogs". North Carolina General Statutes had definitions with different titles (dangerous and potentially dangerous dogs). The inconsistency in definition titles between the County's Ordinance and the North Carolina General Statutes consistently caused confusion for those impacted by the provisions. In an effort to make the County's Animal Control Ordinance easier to interpret, Catawba County's definitions were aligned more closely with the N.C. General Statute definitions. In addition to changes to the definitions, additional changes were made in May 2008 regarding confinement instructions for dogs that are declared potentially dangerous. For dogs that are deemed dangerous, the May 2008 amendments to the Catawba County Animal Control Ordinance state that the animal must be humanely destroyed. This addresses cases where a dog has killed or severely injured a human or is being trained or kept for dog fighting. Catawba County's Ordinance is more strict than the North Carolina General Statutes in these cases.

When a dog is declared potentially dangerous, North Carolina General Statute 67-4.2 prescribes the minimum confinement requirements that a local government may employ. The statute states, "It is unlawful for an owner to: (1) leave a dangerous dog unattended on the owner's real property unless the dog is confined indoors, in a securely enclosed and locked pen, or in another structure designed to restrain the dog; and (2) permit a dangerous dog to go beyond the owner's real property unless the dog is leashed and muzzled or is otherwise securely restrained and muzzled." General Statute 67-4.2 also states that, "If the owner of a dangerous dog transfers ownership or possession of the dog to another person as defined in G.S. 12-3(6), the owner shall provide written notice to: (1) the authority that made the determination under this Article, stating the name and address of the new owner or possessor of the dog; and (2) the person taking ownership or possession of the dog, specifying the dog's dangerous behavior and the authority's determination." Violation of this section is a Class 3 misdemeanor.

When Catawba County staff made recommendations to change the confinement requirements in May 2008, the intent was to make the requirements as clear as possible for the public. Staff found in the past that no specified enclosure requirements was causing inconsistency in the enforcement and adherence to written instructions. The changes made in May 2008 allowed for only one option, the confinement of a potentially dangerous dog in a secure enclosure designed to specifications outlined in the amended ordinance.

After lengthy discussions regarding the home confinement options, the Board agreed on changes to approve and that home confinement would not be included as an option. Commissioner Hunsucker made a motion to approve the amended ordinance set forth below.

Changes approved by the Board to the confinement requirements for dogs declared potentially dangerous include: a modification of the requirements for a 4 inch concrete pad to a 2 inch concrete pad when building the secure enclosure and for when a dog must be leashed and muzzled, from when it is removed from the enclosure to when it is off the owner's property. The Board clarified this modification to state the dog must be leashed and in the control of the owner when it is removed from the enclosure when it is on the owner's property, and muzzled and leashed and in the control of the owner when off the owner's property. Additionally, a dangerous and potentially dangerous appeal bond has been removed and changes to the language are recommended pertaining to the relocation of a potentially dangerous dog.

The approved changes include changes to the definition of a potentially dangerous dog. A dog would no longer be declared potentially dangerous if it kills or inflicts severe injury on a domestic animal or approaches a person in a vicious or terrorizing manner in an apparent attitude of attack when the dog is on the owner's property. The amended ordinance defines a potentially dangerous dog as a dog that severely injures or kills a domestic animal when not on the owner's property, or approaches a person in a vicious or terrorizing manner in an apparent attitude of attack when not on the owner's property. This makes these definitions mirror the North Carolina General Statute definition in these cases. The removal of a provision that a dog is potentially dangerous when it inflicts an unprovoked bite on an animal was also approved.

Changes approved by the Board to the dangerous and potentially dangerous dog appeal procedure include language clarifications to require the Dangerous Dog Appellate Board to hold an appeal hearing within 10 days of the appeal being filed with the County; language inserted that will require the members of the Dangerous Dog Appellate Board to disclose any prior personal involvement they have had with the case or other conflicts of interest and recuse themselves accordingly; and language added to clarify the structure of the Dangerous Dog Appellate Board which states that the Board would be composed of five regular members; allow the addition of two alternate members of the Dangerous Dog Appellate Board to make it easier to obtain a quorum and stating that a quorum of three members is needed in order to conduct business; that Dangerous Dog Appellate Board members are appointed by the Board of Commissioners for terms that run until a successor is appointed; that at least one veterinarian is to serve on the Dangerous Dog Appellate Board; and that all Dangerous Dog Appellate Board members must reside in Catawba County.

The approved changes require Animal Services to inspect the location where a dog is being relocated to ensure compliance with the written confinement instructions.

The amended ordinance is as follows:

Ordinance No. 2008-18

BE IT ORDAINED that the Catawba County Code of Ordinance, Chapter 6, Animals, is hereby amended to read as follows:

Sec. 6-3. Definitions.

Potentially dangerous dog means any dog that the Animal Services Manager or his/her designee determines to have:

- (1) Killed or inflicted severe injury upon a domestic animal **when not on its owner's real property**, or
- (2) Approached a person **when not on its owner's property** in a vicious or terrorizing manner in an apparent attitude of attack, or
- (3) Any dog that has inflicted an unprovoked bite to a human ~~or animal~~.

ARTICLE VI. DANGEROUS AND POTENTIALLY DANGEROUS DOGS

Cross references: Environment, ch. 16.

State law references: Authority to restrict or prohibit the possession of harboring of animals which are dangerous to persons or property, G.S. 153A-131.

Sec. 6-131. Determination of dangerous and potentially dangerous dogs.

(1) A dog is automatically a dangerous dog if it has killed or inflicted severe injury on a person or if it is kept for the purpose of dog fighting. Animal services shall impound the dog immediately.

a. The Animal Services Manager shall order the dog be humanely destroyed.

b. The owner of an animal which has been ordered to be humanely destroyed by the Animal Services Manager has the right to appeal said order in the manner set forth in Section 6-132 of this Chapter.

(2) The Animal Services Manager or his/her designee shall determine whether a dog shall be declared potentially dangerous.

a. The Animal Services Manager or his/her designee shall notify the owner in writing, giving the reasons for the determination **with specific confinement instructions as outlined in Section 6-133.**

b. Once a dog has been declared potentially dangerous, animal services shall impound the dog immediately for no more than (21) days or until the owner **complies with specific confinement instructions from the Animal Services Manager or his/her designee** ~~can provide adequate enclosure,~~ whichever happens first.

c. The owner must notify animal services in writing of their intent to **comply with the confinement instructions** ~~build the enclosure~~ as specified by the Animal Services Manager within three (3) working days of receipt of the potentially dangerous dog determination letter.

d. If the owner fails to notify animal services of their intent to **comply with the confinement instructions** ~~build the enclosure~~ within three (3) days or fails to **comply with the confinement instructions** ~~build the enclosure~~ within 21 days of the receipt of the potentially dangerous dog determination letter, the dog shall become the property of the county and shall be disposed of in accordance with this chapter.

Sec. 6-132. Appeal Procedure for Dangerous and Potentially Dangerous Dogs.

(1) The owner of an animal which has been declared dangerous or potentially dangerous pursuant to this section has the right to appeal said determination by filing a written objection stating the grounds for the appeal with the Emergency Services department within three (3) days of receipt of the dangerous or potentially dangerous dog determination letter.

(2) The Dangerous Dog Appellate Board as designated by the county shall ~~schedule~~ **hold** a hearing within ten (10) days of the filing of the written objections. The decision by the appellate board shall be sent to the person requesting the appeal within ten (10) working days following the date of the hearing. Any appeal from the final decision of such appellate board shall be taken to the Superior Court by filing notice of appeal and a petition for review within ten (10) days of the final decision of the appellate Board. **The Dangerous Dog Appellate Board shall be composed of five regular members and two alternates. At least one of the regular members shall be a licensed veterinarian. All the members and the alternates shall be residents of Catawba County and appointed by the Catawba County Board of Commissioners to serve until a successor is appointed. A quorum of at least 3 members (any combination of regular members and alternates) must be present at an appellate board hearing in order for the appellate board to conduct business. The members of the Dangerous Dog Appellate Board shall be expected to disclose any prior personal involvement they have had with the case or other conflicts of interest, and recuse themselves accordingly.**

(3) All testimony offered at the appellate board held pursuant to this chapter shall be given under oath and recorded by audio recording. The hearing shall be open to the public and the person

~~requesting the appeal may be represented by an attorney. All persons requesting an appeal pursuant to this chapter shall post with animal services an appeal bond of ten percent of the amount owed for redemption and boarding fees and civil penalties arising out of the conduct which is the subject of the appeal. However, in no event shall the appeal bond required pursuant to this section be less than \$25.00 nor more than \$250.00.~~

~~a. The appeal bond shall be waived for any citizen determined to be indigent after filing an affidavit of indigence. The affidavit must state that the citizen is without funds to post an appeal bond in the amount required.~~

~~b. The Emergency Services Department shall hold the appeal bond pending determination of the appeal. The appeal bond shall be fully refunded to the citizen if the Dangerous Dog Appellate Board overturns the action or decision complained of. If the Dangerous Dog Appellate Board upholds or affirms the action or decision of the animal services division, the appeal bond shall be paid to the animal shelter toward boarding and redemption fees for the subject animal.~~

~~c. The owner remains responsible for any outstanding boarding and redemption fees or civil penalties that are not satisfied by the appeal board.~~

(4) The Animal Services Manager shall have the burden of proving that this chapter has been violated and that the sanction is in compliance with this chapter. The person requesting the appeal will be given an opportunity to prove that this chapter has not been violated and/or that the sanction is not in compliance with this chapter. The Animal Services Manager will be given a final opportunity to clarify any conflicts, ambiguities or inconsistencies created by or arising from the statements or evidence. The Dangerous Dog Appellate Board may ask questions at any time during the appeal hearing and may request additional evidence from either party.

(5) If the decision is against the Animal Services Manager, animal services shall immediately cease efforts to implement the sanction(s). Any decision rendered by the Dangerous Dog Appellate Board applies only to the violation(s) and sanction(s) appealed and does not prevent animal services from enforcing a subsequent violation of the same provision or any other provision of this chapter. **If the Dangerous Dog Appellate Board upholds or affirms the decision of the Animal Services Manager or his/her designee, the owner is responsible for all applicable boarding fees, redemption fees and civil penalties.**

Sec. 6-133. Confinement and restraint of potentially dangerous dogs.
The owner of any potentially dangerous dog shall comply with the following:

(1) **The dog shall be confined according to the specific written instructions of the Animal Services Manager or his/her designee. Based on the circumstances of the case, the Animal Services Manager or his/her designee may choose to order one of the following:**

a. Enclosure for potentially dangerous dogs: If an animal has been determined to be potentially dangerous, as specified in this section, the owner may retain the animal upon satisfying the following conditions. The owner must erect, within 21 days, a proper structure and displaying warning signs. This structure must be inspected and approved by the animal services manager, or his designee meeting the following standards.

i. The structure must be a minimum size of 15 feet by six feet by six feet with a concrete pad at least ~~four~~ **two** inches thick. If more than one animal is to be kept in the enclosure, the floor area must provide at least 45 square feet for each animal. The walls and roof of the structure must be constructed of welding chain link of a minimum thickness of 12 gauge, supported by galvanized steel poles at least 2 ½ inches in diameter. The vertical support poles must be sunk in concrete filled holes at least 18 inches deep and at least (8) inches in diameter. The chain link fencing must be anchored to the concrete pad with galvanized steel anchors at interval of no more than 12 inches along the perimeter of the pad. The entire structure must be freestanding and not attached or anchored to any existing fence, building, or structure. The structure must be secured **d** by a child resistant lock.

- ii. A warning sign of at least 120 square inches must be visible from each exposure of the structure, which is visible to any adjoining property. Each sign must have a graphic representation of an appropriate animal such that the dangerous or potentially dangerous animal is communicated to those who cannot read, including children.
 - iii. The owner of the animal will be responsible for ensuring that the enclosure is maintained in such a condition as to meet the requirements of this article. Failure to maintain or repair the enclosure shall subject the owner to a penalty under this article.
 - iv. Prior to inspection of the enclosure by the Animal Services Division, The animal shall not be returned to the owner's property until such time as this shelter and warning signs have been approved. While this structure is being erected, the animal must be boarded at the county animal shelter at the owner's expense.
- (2) A potentially dangerous dog shall not be permitted out of the enclosure, when on the owner's real property, unless the dog is under physical restraint by a competent person who by means of a leash, chain or rope has the dog firmly under control at all times. Voice command is not recognized as adequate restraint. A potentially dangerous dog shall not be permitted off the owner's real property out of the enclosure unless the dog is muzzled and under physical restraint by a competent person who by means of a leash, chain or rope has the dog firmly under control at all times. Voice command is not recognized as adequate restraint.
- (3) The owner shall be required to notify the animal control officer in writing of his or her intent to relocate any dog deemed to be potentially dangerous or dangerous no less than ten days prior to such relocation. The officer must inspect such location to ensure compliance with the written order prior to the dog's relocation. If such location does not fall under the jurisdiction of this article, the officer shall contact the appropriate animal control or law enforcement agency of the owner's intent to relocate the dog in question to a location within such agency's jurisdiction, and shall further provide copies of all records pertaining to the dog in question to such agency prior to the dog's relocation. ~~The owner shall notify the Animal Services Manager in writing within forty-eight (48) hours of any change in address.~~
- (4) In addition to criminal penalties provided by state law and civil penalties set forth in section 6-10, any person who violates the requirements set forth in subsections (1) through (4) above shall be subject to the following sanctions and remedies:
- a. If a potentially dangerous is found at large, it shall be seized and impounded. An animal control officer is authorized to go upon private property to seize the ~~dangerous or~~ potentially dangerous dog.
 - b. If the dog has caused injury to a person or another animal while at large and not confined within a secure enclosure, the Animal Services Manager shall, in addition to seizing the dog, shall consider the dog dangerous. The owner may appeal this intended action by filing a written request for appeal within Three (3) working days with the office of emergency services as specified in section 6-12.
 - c. Animal Services shall have the right to inspect the premises of the enclosure at any time. If an inspection of the premises where a potentially dangerous dog is confined reveals that the owner has not complied with the requirements for confining the dog, an animal control officer shall issue a civil penalty of \$150.00 in accordance with section 6-10 and may impound the dog at the animal shelter.
 - d. If the dog is not redeemed within three working days of the impoundment or if the owner does not request an appeal within the time limit provided in section 6-12, the dog shall become the property of the county and shall be disposed of in accordance with this chapter.
- (5) Nothing in this article shall prevent a private citizen from bringing an action against the owner of an animal which has caused injury to the private citizen or his property for damages or any other loss resulting from the animal being dangerous.

(Code 1995, § 343.47; 2007, § 6-132)

Sec. 6-134. Transfer of ownership.

If the owner of a potentially dangerous dog transfers ownership or possession of the dog to another person, the owner shall provide within one (1) working day written notice to:

- a. The Animal Services Manager stating the name and address of the new owner or possessor of the dog; and
- b. The person taking ownership or possession of the dog, specifying the circumstances surrounding the dog being declared potentially dangerous in writing to the Animal Services Manager. The new owner shall assume all responsibilities regarding the potentially dangerous dog.

(Code 1995, § 343.48; 2007, § 6-133)

Sec. 6-135. Exceptions.

This article does not apply to the following:

- (1) A law enforcement dog or guard dog being used by a law enforcement officer or bona fide professional security guard to carry out the law enforcement officer's or security guard's official duties or professional responsibilities;
- (2) A dog where the injury or damage inflicted by the dog was sustained by a domestic animal while the dog was working as a hunting dog, herding dog, or predator control dog on the property of or under the control of its owner, keeper or harborer, and the damage or injury was to a specific ~~es~~ or type of domestic animal appropriate to the work of the dog; or
- (3) A dog where the injury inflicted by the dog was sustained by a person who, at the time of the injury, was tormenting, abusing, or assaulting the dog; had tormented, abused or assaulted the dog; or was committing or attempting to commit a crime.

(Code 1995, § 343.51; 2007, § 6-136)

Secs. 6-136---143. Reserved.

This the 17th day of November, 2008.

10. Other Items of Business: None
11. Attorneys' Report. None
12. Manager's Report.

County Manager J. Thomas Lundy requested the Board consider moving into closed session pursuant to North Carolina General Statute 143-318.11 in accordance with NCGS 143-318.11(a)(3), 143-318.11(a)(5) and 143-318.11(a)(6) agreed to recess into Closed Session to consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating the price or other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange or lease and to consider the qualifications, competence, performance, character, fitness, conditions of appointment or conditions of initial employment of an individual. Commission Hunsucker made a motion to move into closed session. The motion carried unanimously. The Board moved into closed session at 8:20 p.m. When the Board returned to open session, it took action and approved an amendment to the County's Personnel Code to authorize the County Manager to waive the county residency requirement for department head positions for hard-to-fill positions or for employees promoted to department head positions where the ability to deliver needed service is not compromised. Commissioner Hunsucker made a motion to approve this change. The motion carried unanimously.

13. Adjournment: Commissioner Beatty made a motion to adjourn at 9:17 p.m. The motion carried unanimously.

Katherine W. Barnes, Chair
Board of Commissioners

Barbara E. Morris, County Clerk